

sound, ACTA points out that the time necessary to gather, analyze, and compile the data necessary to perform accurate and objective cost studies is time during which the ILECs will continue to receive overinflated access charges from IXCs. Therefore, the Commission must set about its prescriptive reform by implementing a two-phased approach. Phase one is the initiation of cost and economic studies to determine forward looking TSLRIC. These studies must be commissioned by the ILECs and submitted to the Commission. The Commission must allow ample time during this process for ILEC study performance, as well as IXC examination and response.

50. Concurrently, the Commission should embark upon phase two. This phase calls for the reinitialization of price cap indices ("PCIs") to a level that would result in a rate of return no higher than a targeted rate. This would have the immediate effect of reducing access rates while TSLRIC studies are conducted. Upon expiration of the TSLRIC study period, the Commission should again reinitialize PCIs to reflect true forward looking TSLRIC pricing as determined by the studies ordered under phase one. An alternative phase two that would be supported by ACTA and is administratively facile for the Commission, would be a policy based increase to the X-factor for a set time period followed by PCI reinitialization based upon TSLRIC levels.

51. Based on the assumption that there may be substantial cost differences relative to interstate access revenues as a whole between current rates and the forward-looking economic costs, the Commission tentatively concludes that there should be some sort of transition mechanism.³⁷ ACTA is flatly flabbergasted by this statement. It is because of the fact that there are egregious differences between cost and current rates that the Commission has been tasked with Access Charge

³⁷ *NPRM* at ¶ 239.

Reform. ILECs have been enjoying the spoils of the victor in the telecommunication arena under the banner of monopoly-protectionist regulation for decades. To suggest that reform of this "legalized sacking" should occur slowly, and less painfully for the ILECs, suggests that Commission pronouncements on its efforts to achieve competition is shallowly rooted in bureaucratic doublespeak.

VII. Transition Issues

A. Universal Service Joint Board Recommended Decision

52. The Commission seeks Comment on the manner in which the universal service support amount attributable to the interstate jurisdiction should reduce interstate access rates. To account for "double recovery," ACTA supports the Commission proposal for a downward exogenous cost adjustment to be made for price cap ILECs to reflect revenues received from any new universal service support mechanism.³⁸ ACTA further endorses that this adjustment should be made to the CCL charge, or to any new mechanism that may replace it, to the extent that the recovery of LTS from other sources is not offset by a SLC cap reduction.³⁹ For ROR ILECs, the Commission points out that interstate costs must be reduced to reflect revenues received from any new universal service support mechanism to the extent allocated to the interstate jurisdiction.⁴⁰ ACTA promotes that this reduction be taken against any new CCL structure put in place as a result of this proceeding.

B. Treatment of Any Remaining Embedded Costs Allocated to the Interstate Jurisdiction

³⁸ *NPRM* at ¶ 245.

³⁹ *NPRM* at ¶ 245.

⁴⁰ *NPRM* at ¶ 246.

53. ACTA reserves Comment on treatment of any remaining embedded costs allocated to the interstate jurisdiction. However, as stated in these Comments in I.A., it is ACTA's position that action on this issue is premature unless all applicable parts of the inter-related rules as well as the Commission's depreciation rules are timely reformed in proper sequence.

VIII. Other Issues

A. Regulation of Terminating Access

1. Price Cap Incumbent LECs

54. The Commission concedes that "terminating access may remain a bottleneck controlled by whichever LEC provides access for a particular customer. As such, the presence of unbundled network elements or facilities-based competition may not affect terminating access charges."⁴¹ ACTA is a proponent of continued regulation of terminating access to prevent ILEC abuse of the customers it holds captive through provisioning of the local loop.

55. The Commission explores several possible methods to regulate terminating access costs, but only one, the creation of a rate ceiling, will prevent ILECs from charging more for terminating access than the forward looking, economic cost of providing the service. One alternative provided by the Commission is the elimination of terminating access with recovery through the origination charge.⁴² This approach might work if every origination resulted in a termination. However, this is not the case. The Commission also offers the idea of a customer charge for termination. This approach is more in keeping with cost being borne by cost causers, but it is nevertheless untenable.

⁴¹ *NPRM* at ¶ 271.

⁴² *NPRM* at ¶ 276.

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This would assess charges against a customer for receipt of unwanted and unwarranted calls, and may result in a flurry of consumer complaints and criticisms of the Commission itself.

2. Non-Incumbent LECs

56. It is ACTA's position that the terminating access rate ceiling imposed by the Commission should apply to all ILECs offering terminating access, including new entrants.

3. "Open End" Services

57. ACTA supports the continued treatment of open end services as terminating traffic for the purposes of rate regulation.

B. Treatment of Interstate Information Services

58. The Commission tentatively concludes that Information Service Providers ("ISPs") should not be required to pay interstate access charges as currently constituted. ACTA could not agree more. Nor should IXC's be required to pay interstate access charges as currently constituted. Rather, ACTA sees it as the duty of the Commission to adopt a radically *new* access charge regime (meaning fair, equitable and reasonable) that reduces access charges to true cost wherein all users of the network bear their respective proportionate shares of rationally calculated access costs.⁴³

59. In the 1983 *Access Charge Reconsideration Order*,⁴⁴ the Commission exempted enhanced

⁴³ Incorporated herein by reference is ACTA's petition titled *Provision of Interstate and International Interexchange Telecommunications Service via the "Internet" by Non-Tariffed, Uncertified Entities, Petition for Declaratory Ruling, Special Relief, and Institution of a Rulemaking*, RM-8775 (filed Mar. 4, 1996) ("ACTA Petition"), ACTA's Initial Comments, Reply Comments, and Supplements filed on August 15, 1996 and August 30, 1996, respectively. In those filings, ACTA highlighted the fact that the access charge regime, as currently constituted, imposes disproportionate costs on IXC's. ACTA also pointed out that the ESP exemption from access charges was outdated and inequitable given the realities of the current market for switched interexchange services. ACTA will address those issues and others in its Comments responsive to the Commission's *Notice of Inquiry* ("NOI").

⁴⁴ *MTS and WATS Market Structure, Memorandum Opinion and Order*, Docket No. 78-72, 97 FCC 2d 682, 711-22 (*"Access Charge Reconsideration Order"*).

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service providers ("ESPs") from paying interstate access charges, in part, on the grounds that ESPs represented an infant industry.⁴⁵ In 1988, the Commission revisited the issue of the ESP exemption and decided to continue the ESP exemption from access charges.⁴⁶ In so doing, the Commission concluded, "that any discrimination that exists by reason of the [ESP] exemption remains a reasonable one so long as the enhanced services industry remains in the current state of change and uncertainty."⁴⁷ The Commission, therefore, has already admitted that the ESP exemption is discriminatory and temporary. For the reasons stated herein, the continuation of this exemption is bad policy which undermines the public interest and public confidence in the impartiality and independence (from political pressures) of the Commission.

60. Contrary to the conditions that existed in 1983, or in 1988 for that matter, the enhanced services industry is no more or less an "infant" industry and is no more or less mired in a state of change and uncertainty than is the local/long distance "one stop shopping" industry as created by TA96. In short, if the Commission intends to favor ISPs because of their "infancy" and "uncertainty" in the marketplace, then it should extend the exemption to IXC's as well who are also facing competitive uncertainty and dangers. In the NPRM, the Commission acknowledges that the Internet access market has become "competitive and dynamic with over 2,000 companies offering Internet access as of mid-1996."⁴⁸ The Internet access market totally parallels the telecom market

⁴⁵ ISPs are treated like ESPs under the Commission's rules.

⁴⁶ *In the Matter of Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, 3 FCC Rcd 2631 (1988).

⁴⁷ *Id.* at 2631.

⁴⁸ NPRM at ¶ 285.

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in that it is growing exponentially and is powered by behemoths (AT&T, MCI, Microsoft, IBM, Netscape, GTE, the RBOCs, etc.) and small entrepreneurs alike. Thus, the Commission's underlying rationale for applying and maintaining the ESP exemption, which was intended to be temporary in nature, does not rationally, equitably, fairly or favorably (to the public interest) apply in today's telecommunications market.

61. The Commission seeks Comment on the "narrow question of whether to permit incumbent ILECs to assess interstate access charges on information service providers." The Commission has noted its "concern that the charges currently paid by enhanced service providers may not contribute sufficiently to the costs of the exchange access facilities they use in offering their services to the public."⁴⁹ Additionally, the Commission has concluded that, "to the extent enhanced service providers are exempt from switched access charges, other users of exchange access are forced to bear a disproportionate share of the local exchange costs that access charges are designed to cover."⁵⁰ The Commission therefore has already admitted that the ESP exemption is discriminatory and temporary given developments in technology. For the reasons stated herein, the continuation of this exemption is bad policy which undermines the public interest.

62. The current access charge regime provides a government mandated subsidy for ESPs and ISPs. A "new" access charge regime that continues the subsidization of ESPs and ISPs is unwarranted and runs counter to the Commission's intent to foster and accelerate the introduction of efficient competition in all telecommunications markets. There is a danger that with this NPRM,

⁴⁹ 3 FCC Rcd at 2631.

⁵⁰ *Id.*

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the Commission will abandon its obligations and, for political expediency, wind up "picking and choosing" technologies through its power to "tax" via government imposed access charges. Government mandated subsidies designed to promote favored technologies at the expense of competitive service providers will retard the introduction of efficient competition in the telecommunications market and undermine the very purpose of this NPRM. Instead, ACTA proposes a fair and flat access "tax" that is more progressive and will prevent the government from becoming embroiled in the business of picking and choosing market winners. History has demonstrated time and again that the free market is at its innovative and productive best when overall tax burdens are reduced and spread out evenly across the economic playing field. In short, technological innovation is more certain to flourish if the government mandates a smaller access contribution from all who use and profit from the telecom infrastructure rather than a larger contribution from a smaller, less politically favored community.⁵¹

63. Promoting the continued growth of the enhanced services market and ensuring the reliability of the nation's telecommunications infrastructure for all users are not mutually exclusive goals. Radically reformed, rational, cost-based access charges borne by ESPs, ISPs, IXC's and other users of the telecommunications infrastructure will provide incentives to improve and optimize today's telecommunications infrastructure and stimulate investment which will assure an adequate supply of capacity and services. Including ESPs and ISPs in the category of entities that contribute access charges recognizes a fact that is abundantly clear -- the provisioning of information services impose

⁵¹ Additionally, expanding the universe of access fee "taxpayers," after radical access reform, may close any alleged "gap."

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costs on the nation's telecommunications networks that are similar to those imposed by IXCs. Application of radically new "true-cost" related access charges to ESPs and ISPs will neither inhibit the growth of these services nor overcompensate the ILECs for actual costs incurred when providing switched services.

64. The Commission states that "[i]t is extremely likely that, had per-minute interstate access rates applied to ESPs over the past 13 years, the Internet and other information services would not have developed to the extent they have today -- and indeed may not have developed commercially at all."⁵² This is a bald, unsubstantiated and politically expedient assertion that ignores the dual realities that: (1) the explosive commercial growth of the Internet has occurred only within the last two years and, (2) the Internet was created by and has benefited from, direct government subsidies under the auspices of the Department of Defense and the National Science Foundation. The Commission should consider all of the reasons for the wonderfully explosive growth of the commercial Internet in the NOI and not make policy based on entirely unsupported but momentarily "fashionable" feelings it echoes from the politically powerful dominant ISP community (Microsoft, Netscape, etc.). Such policy is shallow at best and harmful to the long term development of emerging technologies, at worst. ACTA strongly urges the Commission to take the temporarily "un-cool" path toward the principled policy goals of equity, prudence, fairness and progressiveness and decide to end the outdated ESP exemption. Such a choice would be consistent with the Commission's ostensible policy of creating as free and fair a telecom market as possible. In any event, any transition to a server-based phone system should occur without the government placing

⁵² *NPRM* at ¶ 285.

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its thumb on the scale to create irrational pricing.⁵³

65. The Commission seeks Comment on its tentative conclusion that “the mere fact that providers of information services use incumbent ILEC networks to receive calls from their customers does not mean that such providers should be subject to an interstate regulatory system designed for circuit switched interexchange voice telephony.”⁵⁴ This statement, as framed, is overly narrow and ignores the current realities of ESPs’ and ISPs’ usage of the LEC networks. Since the *ACTA Petition* was filed, it has become apparent that technology allows Internet users to originate *and* terminate calls over the public switched telephone network (“PSTN”) from handset to handset.⁵⁵ Additionally, information services (including voice telephony) transit the ILEC portion of the circuit switched network. The Commission’s statement begs the question of whether there is, at present, an alternative to the circuit switched network that can deliver telecommunications services to the public on a widespread basis in a manner that is both reliable and serves the public interest.⁵⁶ ACTA maintains that it is disingenuous, at best, to imply that the interstate regulatory system for circuit switched interexchange telephony does not apply to the telecommunications services provided by ESPs and ISPs or that new rules should be written so as to exempt ESPs and ISPs from making

⁵³ The Commission should place in this record its own estimates that conversion to the server network of the future will require at least 10 to 20 years.

⁵⁴ *NPRM* at ¶ 288.

⁵⁵ Internet telephony “gateway” products, that are currently available in the telecommunications market, facilitate the termination of an “Internet call” via the called party’s handset.

⁵⁶ In its Initial Comments in the ACTA Petition, ACTA discussed the transition of the circuit switched network to a “server-based” network. However, that development, under conservative estimates, may be as far off as ten to twenty years. Although the Commission must take into consideration the development of new technologies and services when redesigning rules for interexchange voice telephony, the Commission cannot afford to ignore present realities concerning today’s network infrastructure and must consider how new rules will impact that network.

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equitable contributions designed to cover actual costs their services impose on the network, in addition to universal service subsidies.

C. Other Part 69 Revisions

66. ACTA reserves Comment on these proposed revisions.

IX. Third Report and Order

A. Lower Service Band Indices

67. ACTA reserves Comment on these proposed revisions.

B. Waiver Requirement for Introduction of New Services

68. ACTA reserves Comment on these proposed revisions.

X. Response to Initial Regulatory Flexibility Analysis

69. ACTA reserves Comment on the Initial Regulatory Flexibility Analysis. At this juncture, ACTA maintains that the Commission's proposed access charge rules will have a substantial affect on small entities and, in particular, the following proposed rules will have the most dramatic affect on small entities:

- treatment of the Transport Interconnection Charge ("TIC");
- treatment of the Tandem-Switched Transport Services Rate Structure and Rate Level;

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- LECs' ability to provide volume discounts and;
- adoption of a Market-Based Approach to Access Reform.

Respectfully submitted,

AMERICA'S CARRIERS
TELECOMMUNICATION ASSOCIATION

By: 

Charles H. Helein, General Counsel

Robert M. McDowell, Deputy General Counsel

By: 

Faye F. Henris

TeleCon, LLC

8180 Greensboro Drive

Suite 700

McLean, Virginia 22102

Of Counsel:

Brian A. Cute
Helein & Associates, P.C.
8180 Greensboro Drive
Suite 700
McLean, Virginia 22102

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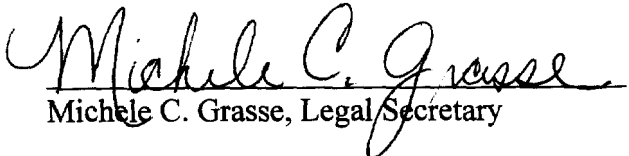
CERTIFICATE OF SERVICE

I, Michele C. Grasse, a secretary in the law offices of Helein & Associates, P.C., do hereby state and affirm that I have caused copies of the foregoing "Comments of America's Carriers Telecommunication Association ("ACTA")," in CC Docket Nos. 96-262, 94-1 and 96-263, to be served upon the following, in the manner indicated, on this 29th day of January, 1997:

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Michele C. Grasse, Legal Secretary